

IN THE CIRCUIT COURT OF THE COUNTY OF ST. LOUIS, MISSOURI
21st JUDICIAL CIRCUIT

DAVID E. ERNST,

Plaintiff,

VS.

**TIAA-CREF INDIVIDUAL &
INSTITUTIONAL SERVICES, LLC**

**Serve: Registered Agent
CSC-Lawyers Incorporating
Service Company
221 Bolivar Street
Jefferson City, MO 65101**

Defendant.

Cause No.

Div.

JURY TRIAL DEMANDED

PETITION

**COUNT I – AGE AND SEX DISCRIMINATION IN VIOLATION OF
THE MISSOURI HUMAN RIGHTS ACT**

COMES NOW Plaintiff David E. Ernst (hereinafter referred to as “Plaintiff” or “Ernst”), and for his cause of action against Defendant TIAA-CREF Individual & Institutional Services, LLC (hereinafter referred to as “Defendant”), states and avers as follows:

1. Ernst is a sixty-five (65) year old male individual who resides within St. Charles County, State of Missouri.
2. Defendant TIAA-CERF Individual & Institutional Services, LLC (“Defendant”) is a foreign limited liability company operating in good standing within the State of Missouri. Defendant operates a facility within the County of St. Louis, Missouri.

3. Venue is proper in this Court pursuant to Mo.Rev.Stat. § 213.111(1) since the alleged unlawful discriminatory practice occurred within St. Louis County, State of Missouri.

4. This Court has subject matter jurisdiction of this matter.

5. This action is brought under the Missouri Human Rights Act, Mo. Rev. Stat. § 213.010, *et seq.*

6. At all times relevant to the action, Ernst was a person as defined by Mo. Rev. Stat. § 213.010.

7. At all times relevant herein, Defendant was an “employer” as defined by Mo. Rev. Stat. § 213.010.

8. Throughout Ernst’s employment with Defendant, Ernst met applicable job qualifications, was qualified for the position for which he held, and performed the job in a manner which met or exceeded the Defendant’s legitimate expectations.

9. Ernst was employed by the Defendant as a Wealth Management Advisor in St. Louis County, State of Missouri.

10. During Ernst’s employment, and at all relevant times herein, Defendant utilized performance metrics to rank its Advisors.

11. During Ernst’s employment, and at all relevant times herein, Ernst’s rankings were consistently higher than many other Wealth Management Advisors.

12. During Ernst’s employment, Defendant applied higher performance metrics to Ernst as compared to those metrics that applied to younger and/or female Advisors.

13. In May, 2019, Defendant's supervisor advised Ernst that Ernst was not going to be terminated as his numbers were trending up.

14. Ernst was held to a higher standard than younger and/or female Advisors, despite the fact that Ernst was well above the national average of Advisors as it related to the performance metrics utilized by the Defendant.

15. On or about July 16, 2019, Ernst was terminated.

16. Defendant informed Ernst he was being terminated due to his performance.

17. Ernst was treated differently than other Advisors by the Defendant as many of the other Advisors ranked significantly lower in terms of the performance metrics but were held to a different standard by Defendant and received no adverse consequences as a result of their performance, or lack thereof, and rankings according to the Defendant's performance metrics.

18. Defendant discriminated against Ernst because of his age and/or gender with respect to the terms, conditions, and/or privileges of employment.

19. As a consequence of Defendant's discriminatory conduct, Ernst lost and continues to lose wages and other financial incidents and benefits of employment.

20. Ernst has incurred and will continue to incur attorneys' fees and costs in connection with this matter.

21. The treatment of Ernst by Defendant resulted in significant humiliation, anxiety, distress, and embarrassment to Ernst.

22. The discriminatory conduct of Defendant was willful, wanton, and without just cause or excuse. Defendant's conduct was outrageous because of Defendant's evil

motive or reckless indifference to Plaintiff's rights, and as a result, Plaintiff is entitled to punitive damages.

23. On or about September 13, 2019, Ernst filed a charge of employment discrimination with the Missouri Commission on Human Rights.

24. On May 11, 2020, Plaintiff received a notice of his right to sue from the Missouri Commission on Human Rights. **(See attached as Plaintiff's Exhibit 1)**

25. This action was filed within ninety (90) days from the issuance of the right to sue letter.

26. The Plaintiff requests a jury trial in this matter.

WHEREFORE, Plaintiff David E. Ernst prays that the Court enter Judgment for Plaintiff against Defendant for lost wages and other benefits of employment, other actual and compensatory damages, prejudgment interest, all costs and attorneys' fees incurred in the prosecution of these claims, punitive damages, and for such other and further relief as this Court deems just and equitable.

RESPECTFULLY SUBMITTED,

ENGELMEYER & PEZZANI, LLC

By: /s/ Anthony M. Pezzani
Anthony M. Pezzani, #52900
tony@epfirm.com
13321 N. Outer Forty Road, Suite 300
Chesterfield, MO 63017
Phone: 636-532-9933
Fax: 314-863-7793



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

Judge or Division: JOHN N. BORBONUS III	Case Number: 20SL-CC03901	(Date File Stamp)
Plaintiff/Petitioner: DAVID E ERNST	Plaintiff's/Petitioner's Attorney/Address ANTHONY M PEZZANI 13321 NORTH OUTER FORTY RD STE. 300 CHESTERFIELD, MO 63017	
Defendant/Respondent: TIAA-CREF INDIVIDUAL & INST. SERVICES LLC	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105	
Nature of Suit: CC Employmnt Discrmntn 213.111		

Summons in Civil Case

The State of Missouri to: TIAA-CREF INDIVIDUAL & INST. SERVICES LLC

Alias:

C/O CSC LAWYERS INCORPORATING
221 BOLIVAR STREET
JEFFERSON CITY, MO 65101

COURT SEAL OF



ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

SPECIAL NEEDS: If you have special needs addressed by the Americans With Disabilities Act, please notify the Office of the Circuit Clerk at 314-615-8029, FAX 314-615-8739, email at SLCADA@courts.mo.gov, or through Relay Missouri by dialing 711 or 800-735-2966, at least three business days in advance of the court proceeding.

05-AUG-2020

Date

Further Information:
MG

Clerk

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
- ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____ a person of the Defendant's/Respondent's family over the age of 15 years who permanently resides with the Defendant/Respondent.
- ☐ (for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).
- ☐ other _____

Served at _____ (address)
in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal)

Subscribed and sworn to before me on _____ (date).

My commission expires: _____

Date

Notary Public

Sheriff's Fees, if applicable

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary

Supplemental Surcharge \$ 10.00 _____

Mileage \$ _____ (_____ miles @ \$._____ per mile)

Total \$ _____

A copy of the summons and a copy of the petition must be served on **each** Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

Twenty First Judicial Circuit

NOTICE OF ALTERNATIVE DISPUTE RESOLUTION SERVICES

Purpose of Notice

As a party to a lawsuit in this court, you have the right to have a judge or jury decide your case. However, most lawsuits are settled by the parties before a trial takes place. This is often true even when the parties initially believe that settlement is not possible. A settlement reduces the expense and inconvenience of litigation. It also eliminates any uncertainty about the results of a trial.

Alternative dispute resolution services and procedures are available that may help the parties settle their lawsuit faster and at less cost. Often such services are most effective in reducing costs if used early in the course of a lawsuit. Your attorney can aid you in deciding whether and when such services would be helpful in your case.

Your Rights and Obligations in Court Are Not Affected By This Notice

You may decide to use an alternative dispute resolution procedure if the other parties to your case agree to do so. In some circumstances, a judge of this court may refer your case to an alternative dispute resolution procedure described below. These procedures are not a substitute for the services of a lawyer and consultation with a lawyer is recommended. Because you are a party to a lawsuit, you have obligations and deadlines which must be followed whether you use an alternative dispute resolution procedure or not. **IF YOU HAVE BEEN SERVED WITH A PETITION, YOU MUST FILE A RESPONSE ON TIME TO AVOID THE RISK OF DEFAULT JUDGMENT, WHETHER OR NOT YOU CHOOSE TO PURSUE AN ALTERNATIVE DISPUTE RESOLUTION PROCEDURE.**

Alternative Dispute Resolution Procedures

There are several procedures designed to help parties settle lawsuits. Most of these procedures involve the services of a neutral third party, often referred to as the “neutral,” who is trained in dispute resolution and is not partial to any party. The services are provided by individuals and organizations who may charge a fee for this help. Some of the recognized alternative dispute resolutions procedures are:

(1) Advisory Arbitration: A procedure in which a neutral person or persons (typically one person or a panel of three persons) hears both sides and decides the case. The arbitrator’s decision is not binding and simply serves to guide the parties in trying to settle their lawsuit. An arbitration is typically less formal than a trial, is usually shorter, and may be conducted in a private setting at a time mutually agreeable to the parties. The parties, by agreement, may select the arbitrator(s) and determine the rules under which the arbitration will be conducted.

(2) Mediation: A process in which a neutral third party facilitates communication between the parties to promote settlement. An effective mediator may offer solutions that have not been considered by the parties or their lawyers. A mediator may not impose his or her own judgment on the issues for that of the parties.

CCADM73

(3) Early Neutral Evaluation (“ENE”): A process designed to bring the parties to the litigation and their counsel together in the early pretrial period to present case summaries before and receive a non-binding assessment from an experienced neutral evaluator. The objective is to promote early and meaningful communication concerning disputes, enabling parties to plan their cases effectively and assess realistically the relative strengths and weaknesses of their positions. While this confidential environment provides an opportunity to negotiate a resolution, immediate settlement is not the primary purpose of this process.

(4) Mini-Trial: A process in which each party and their counsel present their case before a selected representative for each party and a neutral third party, to define the issues and develop a basis for realistic settlement negotiations. The neutral third party may issue an advisory opinion regarding the merits of the case. The advisory opinion is not binding.

(5) Summary Jury Trial: A summary jury trial is a non binding, informal settlement process in which jurors hear abbreviated case presentations. A judge or neutral presides over the hearing, but there are no witnesses and the rules of evidence are relaxed. After the “trial”, the jurors retire to deliberate and then deliver an advisory verdict. The verdict then becomes the starting point for settlement negotiations among the parties.

Selecting an Alternative Dispute Resolution Procedure and a Neutral

If the parties agree to use an alternative dispute resolution procedure, they must decide what type of procedure to use and the identity of the neutral. As a public service, the St. Louis County Circuit Clerk maintains a list of persons who are available to serve as neutrals. The list contains the names of individuals who have met qualifications established by the Missouri Supreme Court and have asked to be on the list. The Circuit Clerk also has Neutral Qualifications Forms on file. These forms have been submitted by the neutrals on the list and provide information on their background and expertise. They also indicate the types of alternative dispute resolution services each neutral provides.

A copy of the list may be obtained by request in person and in writing to: Circuit Clerk, Office of Dispute Resolution Services, 105 South Central Ave., 5th Floor, Clayton, Missouri 63105. The Neutral Qualifications Forms will also be made available for inspection upon request to the Circuit Clerk.

The List and Neutral Qualification Forms are provided only as a convenience to the parties in selecting a neutral. The court cannot advise you on legal matters and can only provide you with the List and Forms. You should ask your lawyer for further information.

CCADM73



IN THE 21ST JUDICIAL CIRCUIT COURT, ST. LOUIS COUNTY, MISSOURI

FILED

AUG 26 2020

JOAN M. GILMER

CIRCUIT CLERK, ST. LOUIS COUNTY

RECEIVED

AUG 12 2020

COLE COUNTY
SHERIFF'S OFFICE

Judge or Division: JOHN N. BORBONUS III	Case Number: 20SL-CC03901
Plaintiff/Petitioner: DAVID E ERNST	Plaintiff's/Petitioner's Attorney/Address ANTHONY M PEZZANI 13321 NORTH OUTER FORTY RD STE. 300 CHESTERFIELD, MO 63017
Defendant/Respondent: TIAA-CREF INDIVIDUAL & INST. SERVICES LLC	Court Address: ST LOUIS COUNTY COURT BUILDING 105 SOUTH CENTRAL AVENUE CLAYTON, MO 63105
Nature of Suit: CC Employmnt Discrmntn 213.111	

(Date File Stamp)

Summons in Civil Case

The State of Missouri to: TIAA-CREF INDIVIDUAL & INST. SERVICES LLC

Alias:

C/O CSC LAWYERS INCORPORATING
221 BOLIVAR STREET
JEFFERSON CITY, MO 65101

COURT SEAL OF



ST. LOUIS COUNTY

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

SPECIAL NEEDS: If you have special needs addressed by the Americans With Disabilities Act, please notify the Office of the Circuit Clerk at 314-615-8029, FAX 314-615-8739, email at SLCADA@courts.mo.gov, or through Relay Missouri by dialing 711 or 800-735-2966, at least three business days in advance of the court proceeding.

05-AUG-2020

Date

Further Information:

MG

Clerk

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

- ☐ delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.
- ☐ leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with a person of the Defendant's/Respondent's family over the age of 15 years who permanently resides with the Defendant/Respondent.

☒ (for service on a corporation) delivering a copy of the summons and a copy of the petition to

CSC lawyers, D.L. (name) designee (title).

☐ other

Served at 350 E. High (address)

in Cole (County/City of St. Louis), MO, on 8-13-2020 (date) at 8:00 AM (time).

Sheriff John P. Wheeler by Sgt. Gene Wray

Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal)

Subscribed and sworn to before me on (date).

My commission expires:

Date

Notary Public

5143
800